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# 'Westy' drops lawsuit; no apology or award

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NEW YORK — After months of complex, frequently rancorous testimony, the case billed as the libel trial of the century came to abrupt, inconclusive halt yesterday as a federal judge accepted a motion by

attorneys for retired Gen. William C. Westmoreland to dismiss his \$120 million suit against CBS News.

The surprising settlement — which accorded Gen. Westmoreland neither an apology nor monetary award but extracted an agreement

from CBS not to countersue the general for \$250,000 in court costs — came during the last scheduled week in the 4½-month trial.

The suit stemmed from a 1982 CBS documentary, "The Uncounted Enemy: A Vietnam Deception," which accused the former head of military operations in Vietnam of masterminding a "conspiracy" to "deceive" his superiors about the true numbers of communist troops in the year leading up to the 1968 Tet offensive.

Gen. Westmoreland denied those allegations, branding CBS reporters and executives as "liars."

In a diplomatically worded statement carefully chiseled by lawyers late Sunday and released yes-

terday, both sides appeared to concede ground.

"Both Gen. Westmoreland and CBS believe that their respective positions have been effectively placed before the public for its consideration and that continuing the legal process at this stage would serve no purpose," the statement read.

"CBS respects Gen. Westmoreland's long and faithful service to his country and never intended to assert, and does not believe, that he was unpatriotic or disloyal in performing his duties as he saw them.

"Gen. Westmoreland respects the long and distinguished journalistic tradition of CBS and the rights of journalists to examine the complex issues of Vietnam and to present perspectives contrary to his own."

While neither side claimed an outright victory, Gen. Westmoreland's chief attorney came closest to it, telling reporters that the joint statement amounted to the "apology" the retired military commander had sought but was denied by CBS before he filed the lawsuit 2½ years ago.

"The general wanted one thing from the beginning of the case. He wanted his reputation back.... he wanted an apology," Mr. Burt said. "If that statement had not been forthcoming, we would be going back to court tomorrow."

During an afternoon press conference, Gen. Westmoreland seemed to confirm this, saying that had CBS issued such a statement in 1982, "it would have fully satisfied me."

CBS attorney David Boise said he "didn't want to characterize" the agreement "one way or the other" but said the defendants in the case are "all very pleased" by the outcome.

"I think the event speaks for itself," Mr. Boise said, adding that "if Dan Burt wants to view that [the statement] as an apology, he is free to do so."

However, Mr. Boise maintained that the documentary was "accu-

rate" and that the matter "really didn't belong in the court."

In a separate statement released by the network, CBS said "nothing surfaced" during the trial "that in any way diminishes our conviction that the broadcast was fair and accurate."

CBS correspondent Mike Wallace, who narrated the report and was a co-defendant in the case, echoed that theme.

"It's an important day for broadcast journalism in general and CBS in particular," Mr. Wallace said. "The broadcast was accurate. We knew it was. This underlines that."

Technically, the suit won't be formally dismissed until today when U.S. District Court Judge Pierre Leval reads the agreement to the jury. That settlement stipulates that neither party can sue the other for court costs or legal fees.

Attorneys for both sides confirmed that the settlement was initiated by Mr. Burt who, two weeks ago, approached CBS with "a formula" to end the trial. At first, they said, Mr. Burt attached "several stipulations" to his offer, including a monetary settlement and an apology. CBS rejected all but one condition — agreeing late Sunday to not file any retaliatory lawsuits.

Some press reports have attributed the eleventh-hour settlement to the realization by Gen. Westmoreland that he "could not win" the suit.

However, sources close to the retired military commander said the decision to drop the suit was based on finances and that attorneys for Gen. Westmoreland had run out of time to present an effective case.

Those sources said that the Capital Legal Foundation, the Washington-based law firm representing Gen. Westmoreland, had spent more than \$3 million on the suit and was "\$500,000 in the hole."

Compounding those financial woes, they said, was the more serious problem of time — Gen. Westmoreland's attorneys had less than 10 hours allotted for cross examinations and summations.

At the start of the trial last October, Judge Leval set a 150-hour limit for both sides to present their cases and question witnesses. Either

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through miscalculation or a tactical error, Gen. Westmoreland's attorneys had used up all but 20 hours when CBS began presenting its defense more than a month ago. Although Mr. Burt appealed to Judge Leval to expand his time, those requests were denied.

Initially, Gen. Westmoreland presented a strong case against CBS.

During the first three months of the trial one high-ranking Johnson administration official after another, including former Secretary of Defense Robert McNamara and Walter Rostow, President Johnson's closest adviser on Vietnam affairs, took the stand to deny CBS's charges that they or any of Gen. Westmoreland's superiors had received false enemy troop figures.

Gen. Westmoreland spent nine days testifying in the Manhattan courtroom, rebutting charges that he did or even could "deceive" his military and political superiors.

Ironically, the decision to present such a meticulous case against CBS may have proved Gen. Westmoreland's undoing.

By the time CBS began putting its witnesses on the stand more than a month ago, attorneys for Gen. Westmoreland had used more than 80 percent of their allotted time. The network's lawyers still had 50 hours left.

Although the network's key witnesses were mostly lower level military officers from Gen. Westmoreland's command and none testified that his former superior had given orders to "falsify" enemy troop numbers, their testimony was critical of Gen. Westmoreland and, without the benefit of rigorous cross-examination, damaging to his case.

With the dismissal, many serious questions concerning Gen. Westmoreland's activities during the Vietnam War and the network's conduct as well, will go largely unresolved.

But, according to CBS attorney Boise, that is as it should be.

"We've been saying from the beginning," Mr. Boise said, "that this was a controversy that really didn't belong in the court, that really ought to be debated by historians and journalists."